

70.

S/um

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MICHAEL F. DAVIS

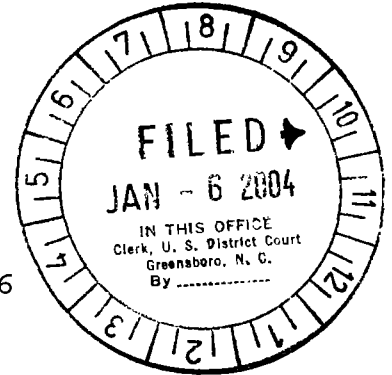
Plaintiff,

v.

MT. AIRY POLICE DEPARTMENT,
OFFICER P.M. BARKER,
OFFICER S.T. OSBORNE,
OFFICER M.S. SAWYERS, and
NURSE M.W. LINDSAY, R.N.,

Defendants.

1:00CV00986



JUDGMENT and ORDER

OSTEEN, District Judge

At the settlement conference, which was unsuccessful in settling the litigation, the court indicated that the matter would be tried in January 2004. Upon inquiry of the parties, the court was assured by the pro se Plaintiff and attorney for the Defendants that each side was ready to proceed and that 9:00 a.m., January 2, 2004, would be a convenient and appropriate time to begin the trial.

When court opened at 9:00 a.m., January 2, 2004, the four Defendants, several witnesses, and their attorney were present and ready to proceed. The Plaintiff failed to show. The court directed that the Plaintiff be called and the voice which

answered explained that she was Plaintiff's fiancée. That voice indicated that Plaintiff had no driver's license and was unable to secure transportation to the court. The Plaintiff's address, Mt. Airy, North Carolina, is approximately 60 miles from the courthouse. The voice indicated that the Plaintiff was there in the house with the voice.

When the court asked to speak to the Plaintiff, the story was changed and the voice indicated that the Plaintiff was not at home. The voice explained to the court that the case would have to be continued to some other time. Finally, the voice said that the real reason the Plaintiff was not in court was the unavailability of his witnesses.

The court instructed the voice to report to Plaintiff that he must call the court within the next few minutes and a direct number was given. The court waited until 9:35 a.m. with no response and returned to the courtroom, where at 9:45 a.m. the court dismissed Plaintiff's litigation for failure to prosecute his claim.

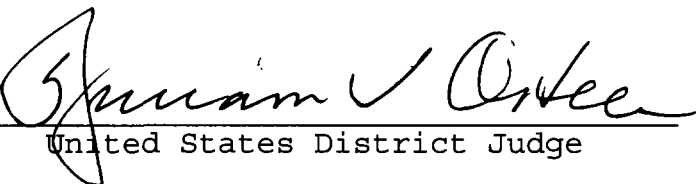
IT IS THEREFORE ORDERED that this proceeding should be and is hereby dismissed for failure to prosecute the claim.

IT IS FURTHER ORDERED that the attorney for Defendants may file with the court within ten (10) days a copy of the attorney fees accumulated to date, which the court will review to

determine what, if any, costs, including attorney fees, to assess against the Plaintiff.

IT IS FURTHER ORDERED that the Plaintiff may within fifteen (15) days from the entry of this Judgment and Order written show cause, if any he has, why costs should not be assessed against him.

This the 6 day of January 200⁴3.


United States District Judge